

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

147771

DATE: FEB 27 1987

SUBJECT: Removal Allowances for Industrial Users of POTWs

FROM: Valdas V. Adamkus
Regional Administrator (5RA)

TO: Lee M. Thomas
Administrator (A-100)

I am writing to request your direct assistance in assuring timely development of a regulatory and policy package for pretreatment removal credits. In directing the Agency to develop limitations for industrial users of POTWs, the Congress recognized that, in some cases, treatment of industrial wastes could occur most efficiently at the POTW. The Clean Water Act includes a provision which could be used to eliminate the potentially redundant treatment requirements imposed by national, technology-based pretreatment standards.

As you know, the Agency's ability to officially sanction such arrangements was dealt a serious blow, when on April 30, 1986, the Third Circuit Court of Appeals invalidated the portion of our regulations which authorized these removal credits. This decision is particularly untimely as it coincides with compliance dates for several industrial categories greatly affected by removal credits: iron and steel manufacturing; copper forming; nonferrous metals manufacturing; and leather tanning and finishing. A number of sources in these categories are faced with technical noncompliance with their standards simply because the Agency presently lacks the regulatory mechanism to implement the Act. We expect that a number of these sources may become direct dischargers if they must comply with categorical standards.

A change of regulations is required to conform to the Court's decisions on technical and procedural issues. Regulations are also required to specify the sludge disposal practices by affected POTWs. I understand that sludge regulations are currently under development, but I am not aware that any progress is being achieved on the removal credit regulation.

In addition to rulemaking, a clear, consistent and equitable interim policy must be established. It will be some time before all of the necessary regulatory authority is in place, and this Region is faced with immediate compliance and other policy issues.

The interim policy must recognize situations where joint industrial-municipal treatment strategies have been implemented or are being pursued. The Regions must be allowed sufficient flexibility to avoid requiring the installation of redundant treatment. Each situation must be evaluated on a case-by-case basis to ensure consistency with the intent of Congress.

Several such joint treatment strategies within this Region have been adversely impacted by the Third Circuit Decision. Three examples illustrate the problems which must be addressed.

First, the ultimate compliance responsibilities of industrial users must be identified. In Sauget, Illinois, a regional treatment plant has been designed from the ground up to provide treatment of industrial wastes regulated by categorical standards, as well as to eliminate several primary sewage treatment plants serving small communities. Presently, several facilities are faced with compliance deadlines and have approached the Region to discuss their responsibilities. No national policy exists on establishing compliance targets where industry will receive significant relief from removal credits.

Second, the responsibilities of delegated States must be clarified. The State of Ohio has taken the initial step to approve the removal credit application for Middletown, Ohio. My staff is presently reviewing the application for technical merit and consistency with the intent of Congress, in light of the Third Circuit Decision. No national policy exists on review of such applications.

Third, the effect of the decision on past and current enforcement activities must be identified. In eliminating a major source of toxic air emissions, the Region has negotiated a consent decree with a steel mill to send coke-making wastewaters to the Warren, Ohio, POTW in anticipation of approving removal credits. This approach eliminates direct volatilization of highly contaminated wastewaters, relying instead on a treatment technology equivalent to the Best Available Treatment Technology for such wastes. However, until the regulatory mechanism is re-established to allow such an approach, the diversion of those wastes cannot take place. No national policy describes the decisions impact on other court judgements.

Many other examples exist within this Region alone. All of the affected parties await our guidance. Your direct involvement will assure the timely development of interim policy and final regulations. The policy statement must recognize that certain facilities have been designed and constructed to jointly treat municipal and industrial wastes. Further, sufficient flexibility to handle these facilities on a case-by-case basis should be established.

I need to respond to these issues within the next 90 days and, unless directed to do differently, I will consider each situation on its own merits and act consistently with the intent of Congress to recognize treatment which occurs at the POTW.

/s/ original signed by
Valdas V. Adamkus

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